Supreme Court, U.S.
FILED

96 543 OCT 7 1996

OFFICE OF THE CLERK

No. ____

In The

Supreme Court of the United States

October Term, 1996

COLONEL DONALD I. REHMAN (RET.),

Petitioner,

v.

THE SUPREME COURT OF FLORIDA, ET AL.,
and
GARWOOD, McKENNA,
McKENNA & WOLF, P.A., ET AL.,

Respondents.

On Petition For Writ Of Certiorari
Or Alternatively
On Petition For Writ Of Prohibition
To The Supreme Court Of Florida

PETITION FOR WRIT OF CERTIORARI
Or Alternatively
PETITION FOR WRIT OF PROHIBITION

COLONEL DONALD I. REHMAN (RET.)
1390 Windy Ridge Court
Longwood, FL 32750-4501
(407) 260-0690
Petitioner Pro Se

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

62 pp

QUESTIONS PRESENTED

1. Whether an award of Appellate Attorney's Fees by the Supreme Court of Florida, in the amount of $1,000, which was invoked there by Court Order:

- without any written findings of fact,
- without any written findings of law,
- without citing any authority,
- without any "entitlement" hearing,
- without any "amount" hearing, and
- contrary to its own controlling precedent case law,

violates the constitutional rights of a Citizen to "due process" and/or is an unconstitutional "fine" for the mere respectful and good faith seeking of Certiorari at that highest State Court in Florida.

2. Whether the Supreme Court of Florida can impose upon United States Citizens who are residents of Florida, what amounts to a judicially imposed "fine", disguised as an award of Appellate Attorney's Fees, to punish them for respectfully and in good faith seeking Certiorari at that Court, but having their Petitions dismissed because that Court determines it does not have any subject matter jurisdiction over certain issues decided by Lower Tribunals.

3. Whether the imposition of Appellate Attorney's Fees by the Supreme Court of Florida, upon a United States Citizen, in the amount of $1,000 as a penalty, because that Court declared it was without subject matter jurisdiction to decide an issue, constitutes a "deprivation" of that person's "Property" (his money), within the meaning and

QUESTIONS PRESENTED – Continued

intent of the Fifth and Fourteenth Amendments to the United States Constitution, such that the Citizen has an entitlement to "due process of law" and equal protection under the law with respect to any such "deprivation".

4. When the Supreme Court of Florida imposes Appellate Attorney's Fees upon a litigant, does that litigant have, under the United States Constitution, by due process of law, a "right of appeal" thereon to the United States Supreme Court, or is any such appeal only "discretionary" at this Court because there is no constitutional right of appeal on "Appellate Attorney's Fees/fines" imposed by the Supreme Court of Florida upon United States Citizens.

5. Is it an unconstitutional exercise of Judicial "power", and an abuse of judicial discretion, for the Supreme Court of Florida to impose unannounced and undefined "fines" upon United States Citizens, in violation of the constitution's guarantee of open access to Courts by Citizens; and does such judicial conduct have a "chilling effect" upon the system of Democracy and Justice in the United States of America.

LIST OF PARTIES

Justice Harry Lee Anstead,
Justice Major B. Harding,
Justice Ben F. Overton,
Justice Leander J. Shaw, Jr., and
Justice Charles T. Wells,
of the Supreme Court of Florida,

Garwood, McKenna, McKenna & Wolf, P.A.,
an Orlando, Florida Law Firm

Attorney Thomas C. Garwood, &
Attorney Allen J. McKenna,
managing Partners of Law Firm and

Attorney Theodore R. Baumgardner,
in-house Counsel for ECC Int'l Corp.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

LIST OF PARTIES iii

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 2

PRIOR PROCEEDINGS IN THIS CASE 6

REASONS FOR GRANTING THE PETITION 12

CONCLUSION 15

INDEX TO APPENDICES

Appendix A Decision of Sup.Ct. of FL Granting Fees A1

Appendix B Rehearing Denial by Sup.Ct. of FL B1

Appendix C Biographical Sketch C1

Appendix D Flowchart of Occurrences D1

Appendix E Federal Magistrate Judge's Report and Recommendation E1

Appendix F Federal Court Order Adopting Report and Recommendation F1

Appendix G Order for Federal Trial G1

Appendix H State Trial Court Order Denying Defendants' Motion for Summary Judgment H1

Appendix I State Trial Court Order for Trial in Defamation Case I1

Appendix J State Trial Court Successor Judge's Conviction of Criminal Offense J1

Appendix K Successor Judge's Orders for Summary Judgment K1

Appendix L 5th DCA State Court Per Curiam Orders L1

Appendix M Fla.Sup.Ct. Order Dismissing Petition M1

Appendix N Brief Treated as Reinstatement Motion N1

TABLE OF AUTHORITIES

Page

CASES:

THE FLORIDA STAR v. B.J.F., 530 So.2d 286 (Fla. 1988) 6

WHITTEN v. PROGRESSIVE CASUALTY INSURANCE CO., Fla. 410 So.2d 501 (Fla. Sup. Ct., Feb 18, 1982.) 9

FLORIDA CONSTITUTION:

Article I 2

FLORIDA STATUTE:

57.105 ..... 9, 10

FEDERAL STATUTES:

28 U.S.C. § 1254 1

31 U.S.C. § 3730(h) 3

FEDERAL CONSTITUTION

Amendment 5 2

Amendment 14 2

PETITION FOR WRIT OF CERTIORARI

Petitioner pro se, Colonel Donald I. Rehman (Ret.) [hereinafter: "Rehman"], respectfully petitions for a writ of certiorari to review the final judgment of the Supreme Court of Florida in this case.

OPINIONS BELOW

The decision of the Supreme Court of Florida, to invoke $1,000 in Appellate Attorney's Fees upon Rehman, without any findings of fact, without any findings of law, without citing any authority, without any hearing, and contrary to its own controlling precedent case law, occurred on July 19, 1996, by the order at **Appendix 'A'** hereto. Rehman timely filed a *"Motion for Rehearing on Appellate Attorney Fees"* on July 25, 1996; which was denied, by the order at **Appendix 'B'** hereto, without opinion, on September 10, 1996.

JURISDICTION

The Supreme Court of Florida, having entered its final judgment on September 10, 1996, and there being no Court other than the Supreme Court of the United States to which Rehman can appeal, the jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment 5:

[N]o person shall. . . . , nor be deprived of life, liberty, or ***property,*** *without due process of law; . . .*

United States Constitution, Amendment 14:

[N]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or **property**, *without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

Florida Constitution, Article I Declaration of Rights:

Section 9. Due Process. – [N]o person shall be deprived of life, liberty or **property** *without due process of law,. . . .*

Florida Constitution, Article I Declaration of Rights:

Section 21. Access to courts. – [T]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

STATEMENT OF THE CASE

In order to properly present to this Court what happened at the Supreme Court of Florida, which is the sole basis of this PETITION, it is necessary to recite briefly the events that started in a Florida private sector workplace, then in a Federal Court lawsuit, then in a Florida Trial Court, then at a State of Florida District Court of Appeal, and finally at the Supreme Court of Florida.

In 1989, Rehman, whose Biographical Sketch is contained at **Appendix 'C'** hereto, became an employee of ECC International Corp. (hereinafter "ECC"), a Defense Contractor having its main facility in Orlando, Florida. Those RESPONDENTS in this Petition who are not judges, are the Attorneys for that Employer.

Shortly after commencing his ECC employment, Rehman detected defense contract fraud in the ECC workplace. The adverse events that then occurred to Rehman, are summarized in the one page flowchart contained at **Appendix 'D'** hereto. Rehman, after being fired by ECC in 1990, for engaging in whistleblower "protected activity" under 31 U.S.C. § 3730(h), and for repeatedly refusing to participate in his employer's defense contract fraud, filed a lawsuit for wrongful termination of employment in Federal Court, upon which ECC repeatedly sought summary judgment. ECC appealed the Federal Court's denial of summary judgment, to the Eleventh Federal Circuit Court of Appeals. The United States Government (Department of Justice) entered the case there as Amicus Curiae in support of Rehman's position, and the ECC appeal was subsequently dismissed by the Federal Appellate Court. During more than six (6) years of Federal Court litigation on Rehman's lawsuit, the Attorney RESPONDENTS in this Petition, who are all attorneys for ECC, filed ten (10) equivalent Motions for Summary Judgment.[1] Their last Motion for Summary Judgment resulted in the Federal Magistrate Judge's Report and Recommendation contained at **Appendix 'E'** hereto, the Presiding Federal Judge's Order adopting it contained at

---

[1] Some were disguised as Motions in Limine.

Appendix 'F' hereto, and the Federal trial remains set for January 1997 per the Order contained at **Appendix 'G'** hereto.

During discovery in the Federal lawsuit, ECC refused to furnish names and addresses of certain former employees, but on a Motion to Compel filed by Rehman, the Federal Court so ordered. Just before furnishing the Court ordered names and addresses to Rehman, the Attorney RESPONDENTS here wrote and sent letters to the 108 persons, portraying Rehman in such a vile manner so as to create revulsion towards him and to make vile assertions relating to his reputation, principles, and character. Additionally, Attorney RESPONDENTS here, knowingly sanctioned the creation and delivery of a false and defamatory document to the United States Government, intended to intentionally adversely portray Rehman as having supposedly been fired from ECC for misconduct, when no such event had ever occurred; for the purpose of discrediting and defaming Rehman. Rehman attempted to bring a Defamation claim against the Attorney RESPONDENTS in Federal Court; however, it declined to exercise jurisdiction.

Ultimately, Rehman timely filed a Defamation lawsuit in State Court. The presiding Judge denied Attorney RESPONDENTS' Motion for Summary Judgment, copy of Order at **Appendix 'H'** hereto, and trial on Rehman's Defamation Claim was scheduled at that State Court, copy of Order at **Appendix 'I'** hereto. Immediately thereafter, a State Circuit Court Judge, who had been arrested for a criminal offense and was pending trial in that matter, was taken out of the State Circuit's Domestic Court,

transferred to the Civil Division and assigned to Rehman's Defamation Case. That Judge was convicted in a public trial by jury, see document at **Appendix 'J'** hereto, and almost immediately thereafter all Rehman's litigation in State Court began to rapidly deteriorate (retaliation by the Judge, against Rehman who was pro se, for the Judge's criminal conviction by jury of citizens like Rehman) whereby the convicted judge disregarded all that had gone before and Rehman's Defamation Case went from "scheduled for trial" to a "thrown out of Court" status as reflected in the Trial Court's decisions at **Appendix 'K'** hereto. In so doing, the Trial Court Successor Judge, caused Rehman to be denied due process, caused him not to be given equal treatment under the law, and deprived him of beneficial controlling precedent case law. On September 3, 1996, in a nonpartisan election, the Electorate of the County in which the Trial Court Successor Judge serves, voted overwhelmingly (60.17%) for the Judge's opponent,[2] thereby in effect removing the Trial Court Successor Judge from judicial office commencing 1 January 1997.[3]

Upon appeal of the matter to the District Court of Appeal of the State of Florida for the Fifth District (5DCA), although Rehman timely raised the constitutional due process, equal treatment under the law, controlling precedent case law, and disqualification of the Judge issues, all were disregarded completely in a simple

---

[2] A former Judge who had been voted out of office by the voters six years ago.

[3] The issue of the Trial Court Successor Judge's criminal conviction was a major issue in the election.

"per curiam affirmed" order from that Appellate Court. A copy of that Order is at **Appendix 'L'** hereto.

PRIOR PROCEEDINGS IN THIS CASE

Rehman noted that The Florida Supreme Court itself, in *THE FLORIDA STAR v. B.J.F.*, 530 So.2d 286 (Fla. 1988) stated:

> ***"To seek review of a state court judgment in the United States Supreme Court, a litigant first must exhaust all avenues of review available in the courts of the state. The fact that review in the highest court is discretionary is irrelevant; the litigant still must seek such review in order to proceed to the United States Supreme Court."***
>
> ***"It is therefore essential to the preservation of a litigant's right to United States Supreme Court review that he or she know with certainty the avenues of appellate review required by the courts of the state."***
>
> ***"A party who files only in the United States Supreme Court, however, would risk the objection that he or she has not exhausted state court remedies."***
>
> *Id.* at 289.

Rehman had absolutely no way of knowing whether any of the distinguishing characteristics of his defamation case would cause the Florida Supreme Court to determine that it indeed had jurisdiction. Thus the only choice he had, in view of the Florida Supreme Court caution to litigants in *THE FLORIDA STAR v. B.J.F.* quoted above, was for Rehman to file his defamation case appeal first at

the Florida Supreme Court. Then, because Rehman prudently and respectfully heeded the above quoted caution of The Florida Supreme Court, the Attorney Respondents/Appellees/Defendants asked The Florida Supreme Court to in essence impose a fine (Appellate Attorney's Fees) upon Rehman for a supposedly act of frivolousness in his going to that Court and respectfully asking for Certiorari.

The Supreme Court of Florida ORDER at **Appendix 'A'** hereto, invoking Appellate Attorney's Fees in the amount of one-thousand dollars ($1,000) against Rehman, is unjust in both *entitlement and amount* because:

a. It establishes a precedent whereby law abiding pro se litigants who go respectfully and in good faith to the Supreme Court of Florida, seeking a subject matter jurisdictional determination from that Court, and paying a $250 filing fee for such determination, will then be penalized by being in essence "fined" when that Court determines it is without subject matter jurisdiction.[4]

b. The Supreme Court of Florida uses what gives the appearance of an "entrapment" modus operandi upon pro se litigants, in that when it first declares it is without jurisdiction and dismisses the pro se's case without prejudice, it does so with an added statement that declares the case is subject to reinstatement upon

---

[4] In this case Rehman was fined $1,000 when that Court determined that it had no subject matter jurisdiction.

proper MOTION;[5] then when the pro se litigant respectfully files what that Court treats as an appropriate MOTION,[6] the Court then rejects it and unjustly gives appellate attorney's fees to the Respondents.[7] In this instance, that Court awarded appellate attorney fees to Respondents for Rehman's case that was dismissed subject to reinstatement upon MOTION filing; yet, then the Supreme Court of Florida, long after dismissal of the case for lack of subject matter jurisdiction, implied by its "fine" upon Rehman that he supposedly had a frivolous

---

[5] See that Court's ORDER of April 18, 1996 at **Appendix 'M'** hereto.

[6] See the Supreme Court of Florida's Notification of April 22, 1996 at **Appendix 'N'** hereto.

[7] Had that Court simply dismissed Rehman's appeal in the first instance with prejudice, by simply declaring that it was without jurisdiction, and made no provisions for reinstatement under any circumstances, Rehman would have proceeded on to the United States Supreme Court, without making any further filings at the Supreme Court of Florida and thereafter withdrawing any pending actions at that Court in this instant Case. However, that Court did not do that; it provided for reinstatement of the case upon proper MOTION; which is what Rehman in essence had then filed. Then, unbelievably the Court fined Rehman $1,000 for coming to the Supreme Court of Florida in the first place. In their 29 April 1996 MOTION FOR ATTORNEY'S FEES, Respondents' sole basis for asking the Supreme Court of Florida for appellate attorney's fees was that Rehman went to that Court with a *per curiam affirmed* lower tribunal order, thus they said Florida Statutes Section 57.105 (frivolous lawsuit) supposedly applies. Surely such action was never envisioned as being the kind of frivolous conduct that "triggers" liability under Florida Statutes Section 57.105 (Frivolous Lawsuit). In any event that Statute was not cited by the Florida Supreme Court when it invoked Appellate Attorney's Fees upon Rehman.

appeal. Based upon the Supreme Court of Florida prior ORDERS, at **Appendix 'M' & 'N'** hereto, it would appear that Rehman's appeal could not have later been treated as being supposedly frivolous. It is interesting to note that the Supreme Court of Florida did not declare Rehman's appeal to be frivolous in its ORDER at **Appendix 'A'** hereto assessing appellate attorney's fees, it merely in effect ordered Rehman to be fined $1,000 without explanation, justification, or the citation of any authority whatsoever.

c. The $1,000 fine is unconstitutional because it imposes upon Rehman a forfeiture (taking) of his property (money) solely because he asked the Supreme Court of Florida to exercise jurisdiction in a discretionary appeal; which that Court then determined it was without jurisdiction to consider. Rehman's defamation case appeal is now before this United States Supreme Court as a Petition for Writ of Certiorari, Case number 96-197.

d. There has been no written declaration by the Supreme Court of Florida that Rehman's appeal was frivolous and intolerable; a requirement that the Supreme Court of Florida has imposed upon every other Florida State Court which invokes Florida Statutes Section 57.105 penalty. See ***WHITTEN v. PROGRESSIVE CASUALTY INSURANCE CO.***, Fla. 410 So.2d 501 (Fla. Sup. Ct., Feb 18, 1982.)

[S]tatute governing award of attorney fees to prevailing party in civil action in which court finds complete absence of justiciable issue raised by losing party, may not be extended to every case and every unsuccessful litigant; not every party that prevails in motion for summary judgment, motion to dismiss

for failure to state cause of action, judgment on the pleadings, evidentiary hearing or trial is automatically entitled to attorney fees under such statute and merely losing, either on pleadings or by summary judgment, is not enough to invoke operation of statute. (*Id.* at headnote 11.)

[W]ithout trial court's finding of complete absence of justiciable issue raised by losing party, order assessing attorney fees was technically deficient and would be reversed. (*Id.* at headnote 14.)

[S]ummary judgment is not equivalent to the finding of frivolousness required by section 57.105 for award of attorney's fees. (*Id.* at 506.)

e. The invoking of appellate attorney's fees at the Supreme Court of Florida, while not citing, but perhaps using, Florida Statutes Section 57.105,[8] given the record of good faith Pro Se Petitioner actions established in this case, would make such an application of that Statute, to Rehman's appeal in this case, unconstitutional and abusive. The assessment of appellate attorney's fees upon a pro se, by that Court, which declared that it did not have subject matter jurisdiction over Rehman's appeal, yet apparently established jurisdiction over Rehman's "person" so that it could "fine" him for his in effect respectfully saying to that Court the equivalent of "please may I appeal this matter", raises the unintended appearance of some sort of "judicial retaliation" designed to

---

[8] In reality, Rehman cannot tell exactly what rationale, reasoning, authority, or otherwise, that the Supreme Court of Florida used in determining and assessing Appellate Attorney's Fees upon Rehman, because that Court was absolutely "silent" in its **Appendix 'A'** hereto ORDER on all those aspects.

discourage Florida Citizens from communicating with the Supreme Court of Florida without first hiring an attorney.

In his Petition to the Supreme Court of Florida, Rehman said:

> ***"By means of this appeal, Rehman is respectfully attempting to provide within the State of Florida, at the highest Court of this State, an opportunity to examine the Federal constitutional and other issues that deprived him of due process of law and his other constitutionally guaranteed rights; so as to bring forth justice, prior to Rehman exhausting all possibilities of relief within the State of Florida and having to make application to The United States Supreme Court for relief."***

It seems beyond belief and comprehension, that the foregoing good faith stated intention would result in that Court then inflicting upon Rehman a $1,000 fine for his going to that Court. That also seems especially "cruel" in light of the principles of fairness, justice and understanding normally reflected in that Court's interactions with pro se litigants and the Florida Public.

What that Honorable Court has in effect done, is to establish a precedent whereby pro se litigants, who like Rehman, respectfully seek good faith discretionary appeal at the Supreme Court of Florida, could now unexplainably suffer the full wrath of that Court's exercise of its awesome and seemingly limitless judicial power, such that there is a "smite" upon those who have spent their lifetime being law abiding citizens, and those like Rehman who have served in the Armed Forces of The United

States so as to constitutionally guarantee that the American Judicial System can flourish in a Society based upon freedom and justice for all. Rehman's "crime", if there was one, is not that he went to the Supreme Court of Florida with any frivolous subject matter, because neither the Respondents nor the Court said that; rather, Rehman's "crime" for which he was ordered to pay $1,000, is apparently imposed because he went to that highest Tribunal in the State of which he is a Citizen and dared to in effect utter the words, "please help me to obtain justice", and he had only a "per curiam affirmed" lower tribunal order in hand.

REASONS FOR GRANTING THE PETITION

There comes to this Court, through this case, the circumstances whereby a State Court invoked upon a law abiding United States Citizen:

- without any written findings of fact,
- without any written findings of law,
- without citing any authority,
- without any "entitlement" hearing,
- without any "amount" hearing, and
- contrary to its own controlling precedent case law,

what amounts to a "fine", in the form of award of Appellate Attorney's Fees. It also appears that there may not be any United States Supreme Court case law which addresses such a subject. To allow a citizen to be arbitrarily deprived of his property (his money) by means of such circumstances, is in effect a State Court action amounting to a judicial "suspension" of United States

Constitutional guarantees to *due process* and to equal treatment under the law. Additionally, it establishes a dangerous to constitutional democracy technique, whereby the judicial imposition of arbitrary "fines" at the State Court level can operate to discriminate against and penalize that "class" of persons known as "pro se". Thus there is disparate treatment of pro se citizens by the invoking of Appellate Attorney's fees:

- without any written findings of fact,
- without any written findings of law,
- without citing any authority,
- without any "entitlement" hearing,
- without any "amount" hearing, and
- contrary to its own controlling precedent case law.

Because of the nature of this case, it is a situation of, what happens to one can happen to all; that is, if the Supreme Court of Florida and all its lower tribunals are permitted to violate the constitutional rights to due process and to equal treatment under the law of United States Citizens, even though they be pro se persons, then where does the eroding of Constitutional safeguards to all the citizenry stop. If the Courts no longer have the time, nor take the care, to

- make written findings of fact,
- make written findings of law,
- cite governing authority,
- provide "entitlement" and "amount" hearing,
- and do not act contrary to its own controlling precedent case law,

in the matter of appellate attorney's fees, then it might be said that there may no longer be time for "justice" itself.

If Rehman's Petition in this case, regarding Appellate Attorney's fees, is not granted, then he genuinely fears that the Courts of Florida may thereafter wreak upon its law abiding United States Citizens, especially those who are pro se, a sort of judicial "reign of financial terror" that runs contrary to every principle of justice, and whose consequences are so abusive as to dishonor all those who over two centuries of our Nation's history have proudly served in the judiciary and those who have fought to preserve it, many forfeiting their lives. As an indication of what can happen to the Citizenry here in Florida, one need look only at what happened when Rehman filed a MOTION FOR REHEARING on the Appellate Attorney's Fees issue at the Supreme Court of Florida, in which he respectfully pleaded with the Florida Supreme Court not to fine him. That resulted in the denial of his MOTION, by the order at **Appendix 'B'** hereto, but therein it indicates that one of the Supreme Court of Florida Justices voted to fine Rehman another $1,000; presumably because he tried to respectfully plead with the Court not to fine him in the first place. Had not the other four (4) Supreme Court of Florida Justices voted against further fine, Rehman would have been fined a total of $2,000 for going to the Supreme Court of Florida. If a Citizen no longer is going to be permitted to even plead against the improper imposition of Appellate Attorney's fees, without the potential for further fines, then is not the very foundation of justice itself "endangered".

Rehman holds no animosity towards any Supreme Court of Florida Justice; they are without doubt all honorable and dedicated persons. If anything, Rehman is remorseful that there was no way to avoid naming them

personally in this Petition. The fact that they in effect unjustly "smited" Rehman by their collective action, which Rehman appeals here, in no way should diminish their distinguished and honorable stature; rather, it merely signifies that they, like all on earth, are only human, and like all of us, cannot be perfect in everything, and can err. The Supreme Court of the United States can rectify the potential harm in this matter at bar, if only it will undertake to set forth by case law what standards must be followed by all State Courts in the imposition of Appellate Attorney's Fees.

CONCLUSION

This petition for a writ of certiorari, or alternatively for Writ of Prohibition, should be granted.

Respectfully submitted by,

COLONEL DONALD I. REHMAN (RET.)
1390 Windy Ridge Court
Longwood, Florida 32750-4501
(407) 260-0690
Petitioner Pro Se

October 4, 1996

APPENDIX A

SUPREME COURT OF FLORIDA

FRIDAY, JULY 19, 1996

DONALD I. REHMAN, Petitioner, v. GARWOOD, MCKENNA & MCKENNA, P.A., ETC., ET AL., Respondents.	**	CASE NO. 87,744

Upon consideration of the Motion for Attorney's Fees filed in the above styled cause by the attorney for Respondents',

IT IS ORDERED that said Motion is granted and said attorney is allowed a fee of one thousand dollars ($1,000.00) for services in this Court, said sum to be paid to said attorney by Petitioner.

OVERTON, SHAW, HARDING and WELLS, JJ., concur

ANSTEAD, J., dissents

A True Copy

TEST: [SEAL]

/s/ Sid J. White

Sid J. White
Clerk, Supreme Court

H

cc: Mr. Johnny Euell DuBose, Jr.
Mr. Donald I. Rehman

APPENDIX B

SUPREME COURT OF FLORIDA

TUESDAY, SEPTEMBER 10, 1996

DONALD I. REHMAN,	**	
Petitioner,	**	CASE NO.
v.	**	87,744
GARWOOD, MCKENNA & MCKENNA, P.A., ETC., ET AL.,	**	
Respondents.	**	

Upon consideration of the Motion for Attorney's Fees filed in the above styled cause by the attorney for Respondents',

IT IS ORDERED that said Motion be and the same is hereby denied.

OVERTON, HARDING, WELLS and ANSTEAD, JJ., concur

SHAW, J., would grant in the amount of $1,000.00

Petitioner's Motion for Rehearing on Appellate Attorney Fees, Motion for A Written Dissenting Opinion From Justice Harry L. Anstead and Motion for Stay Pending Review are hereby denied.

OVERTON, SHAW, HARDING, WELLS and ANSTEAD, JJ., concur

A True Copy
TEST: [SEAL]
/s/ Sid J. White

Sid J. White
Clerk, Supreme Court

H
cc: Mr. Donald I. Rehman
Mr. Johnny Euell DuBose, Jr.

APPENDIX C

BIOGRAPHICAL SKETCH – DONALD I. REHMAN

Don Rehman is a Certified Professional Logistician (C.P.L.) with an MBA degree, a Master of Science degree in Logistics Management, and a Bachelor of Science degree in Military Science. He has over 30 years experience in the field of Logistics Management, and he has attended numerous technical courses related to his logistics career field.

As a teenager, Don Rehman commenced a military career, starting as a Private. Serving for more than 26 years, his military career was devoted almost exclusively to logistics. He received successive promotions reaching the grade of full Colonel, and worked in logistics assignments at operational levels, commodity command, major field command, and the Pentagon. He achieved Logistician certification from the cognizant Pentagon agency, in addition to earning his C.P.L. certification.

Subsequent to his military service, Don Rehman commenced a second career in industry where he worked for numerous years. He has been employed by E-Systems as Manager International Marketing & Logistics, Manager Division Profit Planning, and Manager Review & Analysis Group (Logistics). Subsequent to E-Systems employment, Don attended the University of South Florida (Tampa) on a full time basis to earn his second master's degree, an MBA. Upon graduation he joined Sanders Associates as Integrated Logistics Support (ILS) Program Manager. Later he became Manager of Logistics for Codex Corporation. In 1987 Don Rehman established Rehman Consulting Services Company, specializing in

Logistics Management, and relocated from New England to the Orlando Area. An exceptional position opportunity with a Defense Contractor in May 1989, caused him to accept employment with that Company. He subsequently was assigned as the Staff Assistant (for Logistics) to the Vice President Engineering.

Don Rehman has been married for over 42 years to his wife Marian, whom he met at his first duty station after graduating from Officer Candidate School (OCS) and becoming a second lieutenant. They have two children. Their son Doug is a graduate of the University of South Florida with a B.S. in Criminal Justice, is married, 2 children, and is employed with the Florida Department of Law Enforcement (FDLE). Their daughter Linda is a graduate of the Medical College of Georgia with a B.S. in Dental Hygiene, and is following in her mother's footsteps by having married a second lieutenant, who over the years advanced in grade, and is now a Lieutenant Colonel. She has 2 children and works full time in her medical specialty.

Don's hobbies are electronics, computer, and auto mechanics. He served over a year as Director/President of the Northridge Pointe Homeowners' Association, is now its Director/Secretary, and he recently completed several years of service as a member of the Seminole County Sheriff's Civilian Review Board.

FLOWCHART OF: CIVIL ACTION #: 90-425-CIV-ORL-22

ECC INT'L CORP. ALLEGEDLY HAS ROUTINE DETRIMENTAL PRACTICES

↓

PRIOR LOGISTICS MANAGER RESIGNS IN FRUSTRATION TO PRECLUDE BECOMING INVOLVED IN DEFENSE CONTRACT WRONGDOING

PLAINTIFF HIRED AS LOGISTICS MANAGER; DISCOVERS SERIOUS PROBLEMS AT ECC

↓

PLAINTIFF RAISES ISSUES RELATED TO COMPANY DEFENSE CONTRACT MATTERS WITHIN 1ST 2 WEEKS OF EMPLOYMENT COMMENCEMENT

↓

PLAINTIFF ATTEMPTS TO RESIGN AFTER 5 MONTHS OF ENDURING DISCRIMINATION & HARASSMENT, BUT IS PERSUADED TO STAY BY FRAUDULENT ECC PRETENSES

EXTENT AND NATURE OF PLAINTIFF DUTIES DEFINED AND MUTUALLY AGREED TO (BUT 30+ DAYS LATER FULLY VIOLATED BY ECC)

↓

PLAINTIFF ATTEMPTS TO RELIEVE "INCAPABLE" EMPLOYEE FROM SENSITIVE POSITION ON DEFENSE CONTRACT AND GIVE HIM A JOB MORE IN KEEPING WITH HIS CAPABILITIES (EMPLOYEE LATER COMMITS WRONGDOING)

PLAINTIFF SUDDENLY DEMOTED, HUMILIATED, AND PLACED IN ISOLATION AS RETALIATION FOR EXPOSING AND TRYING TO PREVENT DEFENSE CONTRACT FRAUD

↓

PLAINTIFF PERMITTED TO INTERACT ONLY WITH EMPLOYEE WHOM HE TRIED TO RELIEVE. AFTER DEMOTION, OVER A 3 MONTHS PERIOD, BY DIABOLICAL ECC SCHEME, ALL PLAINTIFF'S WORK MUST BE SUBMITTED TO THAT EMPLOYEE, WHO CONTINUALLY DISAPPROVES IT ALL AND THROWS SOME/ALL IN TRASH

↓

OVER SEVERAL MONTHS, PLAINTIFF SUBMITS MEMORANDUMS TO ECC SUPERIOR DOCUMENTING COMPANY'S ALLEGED CONTRACT FRAUD IN EFFORT TO STOP IT

↓

PLAINTIFF BEGINS TO PREPARE WRITTEN FRAUD COMPLAINT TO U.S. GOVERNMENT AND "QUI TAM" (FALSE CLAIMS ACT) ACTION IN NAME OF U.S. GOVERNMENT

KNOWING THAT PLAINTIFF IS GOING TO "BLOW THE WHISTLE", EXTRAORDINARY PRESSURE PLACED UPON PLAINTIFF TO CONFISCATE ALL HIS FRAUD EVIDENCE AND MAKE HIM RESIGN. PLAINTIFF REFUSES TO RELINQUISH DOCUMENTS/RESIGN AND IS SUMMARILY FIRED UNDER PRETEXT OF UNSATISFACTORY JOB PERFORMANCE

↓

DEFENDANTS SEND WRITTEN MISINFORMATION TO OVER 100 PERSONS THROUGHOUT U.S. IN MALICIOUS AND RETALIATORY EFFORT TO INTENTIONALLY IMPAIR PLAINTIFF'S PERSONAL AND PROFESSIONAL REPUTATION

↓

PLAINTIFF SUFFERED PERSONAL HUMILIATION/MENTAL SUFFERING/LOSS OF ENJOYMENT OF LIFE/DISCRIMINATION/JOB LOSS/DEVASTATION OF CAREER AND IMMENSE FINANCIAL BURDEN/LOSS, ETC.

APPENDIX E

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

DONALD I. REHMAN,

Plaintiff,

-vs-

ECC INTERNATIONAL CORP.,

Defendant.

Case No. 90-425-Civ-Orl-22

REPORT AND RECOMMENDATION

(Filed Jun. 5, 1996)

TO THE UNITED STATES DISTRICT COURT

Defendant ECC International Corporation's (herein "ECC") motion for summary judgment (Doc. No. 607) has been referred to the undersigned United States Magistrate Judge for preparation of a Report and Recommendation as to appropriate disposition.

A party is entitled to judgment as a matter of law when the party can show that there is no genuine issue as to any material fact. Fed. R. Civ. Pro. 56(c). The substantive law applicable to the case determines which facts are material. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed. 2d 202 (1986). Summary judgment is mandated "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof." *Celotex Corp. v. Catrett*, 477 U.S. 317,

322 (1986). As the Plaintiff bears the burden of proving his claim, the Defendant is not required to negate it, but may support its Rule 56 motion by "showing – that is, pointing out to the district court – that there is an absence of evidence to support the non-moving party's case." *Celotex*, 477 U.S. at 325; *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112 (11th Cir. 1993). In undertaking this analysis, it is appropriate to construe the *pro se* complaint more liberally than the Court would the complaint of a represented party. *Harris v. Ostrout*, 65 F.3d 912 (11th Cir. 1995).

In its motion, ECC reiterates its earlier arguments pertaining to the two remaining claims in the case, a claim for two weeks of severance pay and a claim pursuant to 31 U.S.C. § 3730(h). *See Report and Recommendation dated March 4, 1993 (Doc. No. 497); and this Court's adoption of same (Doc. No. 532).* Although additional case law has developed since the Court denied ECC's previous motion for summary judgment on the False Claims action, the new case law does not change the facts particular to this case. Because there remain genuine issues of material fact with respect to whether Plaintiff engaged in conduct protected by § 3730(h), whether ECC was aware of such conduct and the significance of the conduct in ECC's decision to terminate Plaintiff, summary judgment is just as inappropriate now as it was three years ago. *See Field v. F & B Manufacturing, Co.*, 1996 WL 238917 (N.D. Ill. May 6, 1996) (summary judgment is inappropriate when a reasonable jury could conclude that claimant had reasonable cause for suspicion and inquiry into company's potentially fraudulent conduct, even if no actual fraud existed.)

With respect to the severance pay claim, as this Court stated previously entitlement to and the amount of severance pay cannot ordinarily be determined summarily.[1] The conflicting testimony and authorities compel denial of summary judgment on this claim.

Therefore, the undersigned respectfully recommends that ECC's motion be **DENIED** and the case remain on the trial calendar.

Failure to file written objections to the proposed findings and recommendations contained in this report within ten (10) days from the date of its filing shall bar an aggrieved party from attacking the factual findings on appeal.

Respectfully recommended in Orlando, Florida on June 5, 1996.

/s/ David A. Baker
DAVID A. BAKER
UNITED STATES
MAGISTRATE JUDGE

Copies furnished to:

Donald I. Rehman
Allen J. McKenna
Theodore R. Baumgardner

---

[1] Interestingly, in defending against Plaintiff's motion for summary judgment on this claim three years ago, ECC argued that, at the very least, factual issues exist as to Plaintiff's entitlement to be paid beyond the actual period of his employment. The Court agrees.

APPENDIX F

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

DONALD I. REHMAN,

Plaintiff

-vs- CASE NO. 90-425-CIV-ORL-22

ECC INTERNATIONAL CORP.,,

Defendant

_____/

ORDER

This cause comes before the Court on Defendant ECC International Corporation's (herein "ECC") motion for summary judgment (Dkt. 607). The United States Magistrate Judge has submitted a report recommending that the Motion be denied. No opposition to the report has been timely filed.

After an independent *de novo* review of the entire record in this matter, the Court agrees entirely with the findings of fact and conclusions of law in the Report and Recommendation (Dkt. 635).

Based on the foregoing, it is ordered as follows

1. The Report and Recommendation filed June 5, 1996 (Dkt. 635), is ADOPTED and CONFIRMED and made part of this Order.

2. The Motion for summary judgment (Dkt. 607) is denied.

DONE AND ORDERED in Chambers, Orlando, Florida, this 27th day of June , 1996.

/s/ Anne C. Conway
ANNE C. CONWAY
United States
District Judge

Copies to: Counsel of Record

APPENDIX G

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

DONALD I. REHMAN,

Plaintiff

-vs- CASE NO. 90-425-CIV-ORL-22

ECC INTERNATIONAL CORPORATION,

Defendant

_____/

ORDER

(Filed Jan. 4, 1996)

Plaintiff's **Renewed Motion to Set Cause for Trial (Dkt. 622)**, filed December 19, 1995, is GRANTED. This jury trial is scheduled for the trial term commencing **January 2, 1997.**

DONE AND ORDERED in Chambers in Orlando, Florida, this 4th day of January, 1996.

/s/ Anne C. Conway
ANNE C. CONWAY
United States
District Judge

Copies to: Donald I. Rehman, *pro se*
Counsel of Record

APPENDIX H

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN
AND FOR ORANGE COUNTY, FLORIDA

CASE NO.: CI 94-3776

DONALD I. REHMAN,

Plaintiff,

vs.

GARWOOD, McKENNA &
McKENNA, P.A., ALLEN J.
McKENNA, THOMAS C.
GARWOOD, JR, and
THEODORE R.
BAUMGARDNER,

Defendants.
_____/

ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

(Filed Nov. 3, 1994)

THIS CAUSE having come before the Court on October 31, 1994 on Defendants' Motion for Summary Judgment and the Court, having heard argument of Plaintiff and of Defendants' counsel, having reviewed the Court file, and otherwise being fully advised in the premises, it is hereby

ORDERED AND ADJUDGED:

That Defendants' Motion for Summary Judgment is denied.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida this 2d of November, 1994.

[SEAL]

/s/ W. Rogers Turner
W. ROGERS TURNER,
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail Delivery to **JOHN E. DUBOSE, JR., ESQUIRE,** Post Office Drawer 3751, Orlando, Florida 32802 and to **DONALD I. REHMAN, PRO SE,** 1390 Windy Ridge Court, Longwood, Florida 32750 this 2 day of November, 1994.

/s/ Jan Cavone
JUDICIAL ASSISTANT

APPENDIX I

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO. CI 94-3776

DONALD I. REHMAN,

Plaintiff,

vs.

GARWOOD, McKENNA &
McKENNA, P.A., et al.,

Defendant.
_____/

ORDER SETTING JURY TRIAL

(Filed Dec. 2, 1994)

ESTIMATED LENGTH OF TRIAL PER NOTICE:3 DAYS

THIS ACTION being at issue, it is set for trial with a jury during the period beginning MAY 23, 1995 at 9:30 a.m.

Mediation shall be scheduled by Plaintiff's counsel with a mediator who is mutually agreeable to all parties. The time for mediation shall be coordinated with opposing counsel and an Order prepared and submitted to the undersigned Judge with appropriate copies and stamped envelopes for mailing. A copy of said Order is attached to Plaintiff's copy.

At least five days prior to trial, counsel shall furnish the trial Judge and serve a copy thereof on opposing counsel the following:

1. A list by name and address of the witnesses to be used at the trial.

2. A memorandum of any law upon which counsel intends to rely, with citations.

3. Copies of any ordinances and a schedule of any statutes upon which counsel intends to rely at trial.

4. Instructions, in writing, on letter size paper, double-spaced and numbered consecutively, which the Court will be requested to give during trial. The written requested instructions will make reference to Standard Jury Instructions approved by the Florida Supreme Court from which taken. In the event special instructions are requested, the citation of the Florida Supreme Court or other court's Opinion upon which it is based will be shown.

5. Forms of verdict.

6. An accurate estimate of the time required for trial.

Jurors may not be questioned by counsel concerning anticipated instructions or theories of law. Any such questions which counsel desire to have asked of prospective jurors shall be submitted to the Court in writing at least five (5) days prior to trial, with a copy served on opposing counsel, and will be asked by the Court, if deemed proper.

In accordance with the Americans With Disabilities Act, persons with disabilities needing a special accommodation to participate in this proceeding should contact Court Administration at 37 N. Orange Avenue, Suite 1130, Orlando, FL 32801, Telephone: (407) 836-2303 not

later than seven days prior to the proceeding. If hearing impaired, (TDD) 1-800-955-8771, or Voice (V) 1-800-955-8770, via Florida Relay Service.

Unless modified by the court to prevent manifest injustice, upon application timely made, this Order shall govern the further conduct of the cause.

DONE and ORDERED this 30th day of Nov., 1994.

/s/ W. Rogers Turner
W. ROGERS TURNER,
CIRCUIT JUDGE

I HEREBY CERTIFY that a true copy of the foregoing Order has been furnished by mail to: DONALD REHMAN, 1390 WINDY RIDGE CT., LONGWOOD, FLA., 32750; JOHN DUBOSE, ESQ., P. O. DRAWER 3751, ORLANDO, FLA., 32802 this 30th day of Nov., 1994.

/s/ Jan Cavone
JUDICIAL ASSISTANT
TO ABOVE JUDGE

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

DONALD I. REHAMN, Plaintiff, vs. GARWOOD, MCKENNA & MCKENNA, P.A., et al, Defendants,	Case No. CI 94-3776

ORDER DISPENSING WITH MEDIATION

THIS CAUSE having come on to be heard on Plaintiff's & Defendants' Joint Motion to Dispense With Mediation, and the Court being fully advised in the premises herein, it is hereby ORDERED AND ADJUDGED:

The Motion to Dispense With Mediation is hereby:

GRANTED

DONE AND ORDERED in Chambers, Orange County Courthouse, Orlando, Florida, this 8 day of December, 1994.

/s/ W. Rogers Turner
W. ROGERS TURNER,
CIRCUIT JUDGE

I HEREBY CERTIFY that a true copy of the foregoing Order has been furnished by mail, this 8 day of Dec., 1994 to:

Mr. Donald I. Rehman
1390 Windy Ridge Court
Longwood, FL 32750
PLAINTIFF Pro Se

John E. DuBose Jr., Esquire
WOOLFOLK, ESTES, KEOUGH & DUBOSE, P.A.
315 East Robinson Street,
Suite 555
Orlando, Florida 32802-3751
ATTORNEYS FOR DEFENDANTS

/s/ Muriel M. Johns
JUDICIAL ASSISTANT
TO ABOVE JUDGE

The Orlando Sentinel
SUNDAY, January 22, 1995

Expelled students are more likely to commit serious crimes, a state study shows, B-3

Local & state

TOM SPITZ/THE ORLANDO SENTINEL

Orange Circuit Judge Linda Gloeckner prepares to wipe her fingers after prints are taken Saturday. She was found guilty of drunken driving.

Judge convicted of drunken driving

By Debbie Salamone

OF THE SENTINEL STAFF

An Orange County judge who rammed her Volvo into the rear of a BMW two years ago was found guilty Saturday of drunken driving.

Circuit Judge Linda Gloeckner was sentenced to serve a year of probation, pay $750 in fines and drive only on business for the next six months.

Her five-day trial in Orlando ended after less than two hours of jury deliberations. Gloeckner, who shook her head after hearing the verdict, declined to comment.

Seminole County prosecutors Eilam Isaak and Jack Kaleita faced an uphill fight after Seminole County Judge Fredric Hitt prohibited them from telling jurors that Gloeckner's blood-alcohol content had been measured at 0.17 percent. Florida's legal limit at the time of Gloeckner's arrest in January 1993 was 0.10 percent.

Defense attorneys Stuart Hyman and Mark NeJame, who had questioned the reliability of the breath test, attacked the credibility of prosecution witnesses throughout the trial. Two alternate jurors — released from duty before jury deliberations — said they would have found the judge not guilty.

Hyman said appeals are likely, and he will ask for a new trial.

"Considering the outcome, it just proves there is a justice system that we have to have faith in. And it proves nobody is above the law," said John

Please see **JUDGE, B-5**

Judge must attend defensive driving school, victims program

JUDGE from B-1

Evans, a victim advocate for Mothers Against Drunk Driving who spoke for the women involved the car accident.

As part of her sentence, Gloeckner, 45, must attend defensive-driving school and a victim awareness program. Hitt withheld a formal ruling of guilt on a careless driving citation. Gloeckner interjected that she had completed a drunken driving course that also is part of her sentence. She said counselors determined she had no alcohol problem.

Gloeckner's car struck the BMW at a traffic light at Wymore and Lee roads. The BMW slammed into a vehicle in front of it. The judge refused to take all but one field sobriety test, saying blindness in one eye would have affected her ability to perform successfully.

Prosecutors, however, showed a video of Gloeckner during her arrest and called some of her answers slurred. They also had testimony from accident victims and a state trooper who said Gloeckner showed signs of intoxication, including smelling of alcohol.

Their key witness, a waitress, produced a restaurant receipt and testified that she served Gloeckner eight 2-ounce straight vodka drinks within two hours at the Maitland restaurant where the judge joined several other women for a birthday party.

But a surprise defense witness — the restaurant owner — testified that the waitress had been known to alter drink and meal tickets to pocket extra money. The receipt brought by the waitress appeared to have some inconsistencies, the defense attorneys argued.

In addition, the lawyers tried to discredit the accident victims, pointing out that a verdict against the judge would help their civil lawsuit against her. They also argued that the women at the party saw Gloeckner drink only two drinks and that she seemed fine upon leaving.

They showed a video of Gloeckner buying food in a convenience store minutes after the accident to prove she walked without staggering or swaying. Several lawyers who saw Gloeckner after the accident testified that she did not appear drunk, and her ophthalmologist testified she had trouble with depth perception that might cause her to stumble.

Gloeckner, who handles civil matters such as contract disputes, already has been reprimanded by the Florida Supreme Court.

APPENDIX K

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

CASE NO.: CI 94-3776

DONALD I. REHMAN,

Plaintiff,

vs.

GARWOOD, McKENNA & McKENNA, P.A., ALLEN J. McKENNA, THOMAS C. GARWOOD, JR, and THEODORE R. BAUMGARDNER,

Defendants.

_____/

ORDER GRANTING DEFENDANTS ALLEN J. McKENNA AND GARWOOD, McKENNA & McKENNA, P.A.'S MOTION FOR SUMMARY JUDGMENT AND ENTERING SUMMARY FINAL JUDGMENT

THIS CAUSE having come before the Court on March 16, 1995 on the Motion for Summary Judgment of Defendants, ALLEN J. McKENNA and GARWOOD, McKENNA & McKENNA, P.A., and the Court, having heard argument of Plaintiff and of Defendants' counsel, having reviewed the Court file, and otherwise being fully advised in the premises, it is hereby

ORDERED AND ADJUDGED:

1. The Court finds that Plaintiff's action is barred by the applicable statute of limitations, *Florida Statutes* Section 95.11(4)(g). Plaintiff's 1992 action filed in the United States District Court for the Middle District of Florida

was not a "supplemental action" as that term is defined in 28 U.S.C. Section 1367 and, consequently, the tolling provision of said statute does not apply to the instant action. Because the above-captioned case was filed in this Court after the expiration of the statute of limitations, Plaintiff's action against these Defendants is time barred.

2. The Court also finds that the Order of the United States District Court for the Middle District of Florida entered on May 17, 1993 in Plaintiff's action filed in that Court, Case Number 90-425-CIV-ORL-22, collaterally estops Plaintiff from relitigating the issue of the alleged defamatory nature of the 108 letters referred to in Plaintiff's Amended Complaint. The District Court determined they were not and Plaintiff is estopped from relitigating that issue in this Court.

3. Summary Final Judgment, therefore, is entered in favor of Defendants, ALLEN J. McKENNA and GARWOOD, McKENNA & McKENNA, P.A., and against Plaintiff, DONALD I. REHMAN, and Defendants, ALLEN J. McKENNA and GARWOOD, McKENNA & McKENNA, P.A., shall go hence without day. Costs will be taxed upon appropriate Motion and hearing.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida this _____ of March, 1995.

Original Signed Apr. 20, 1995
LINDA A. GLOECKNER,
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail Delivery to **JOHN E. DUBOSE, JR., ESQUIRE,** Post Office Drawer 3751, Orlando, Florida 32802 and to **DONALD I. REHMAN, PRO SE,** 1390 Windy Ridge Court, Longwood, Florida 32750 this _____ day of March, 1995.

_____

JUDICIAL ASSISTANT

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY,
FLORIDA

CASE NO.: CI 94-3776

DONALD I. REHMAN,

Plaintiff,

vs.

GARWOOD, McKENNA & McKENNA, P.A.,
ALLEN J. McKENNA, THOMAS C. GARWOOD, JR,
and THEODORE R. BAUMGARDNER,

Defendants.

_____/

ORDER GRANTING DEFENDANTS THEODORE R. BAUMGARDNER AND THOMAS C. GARWOOD, JR.'S MOTION FOR SUMMARY JUDGMENT AND ENTERING SUMMARY FINAL JUDGMENT

THIS CAUSE having come before the Court on March 9, 1995 on Defendants THEODORE R. BAUMGARDNER and THOMAS C. GARWOOD, JR.'s Motion for Summary Judgment and the Court, having heard argument of Plaintiff and of Defendants' counsel, having reviewed the Court file, and otherwise being fully advised in the premises, it is hereby

ORDERED AND ADJUDGED:

1. The Court makes no determination as to whether Plaintiff's prior federal court action was a "supplemental action" as that term is referred to in 28 U.S.C. Section 1367. Defendants, THEODORE R. BAUMGARDNER and THOMAS C. GARWOOD, JR., have never been named as

Defendants in any of Plaintiff's federal court actions and were not named as parties in the above-captioned action in this Court until September 16, 1994. Clearly the statute of limitations applicable to this action for defamation, *Florida Statutes* section 95.11(4)(g), expired prior to the filing of Plaintiff's Amended Complaint on September 16, 1994 and such an amendment does not relate back to the filing of any previously filed Complaints. *See Frankowitz v. Propst*, 489 So. 2d 51 (Fla. 4th D.C.A. 1986); *Gray v. Executive Drywall, Inc.*, 520 So. 2d 619 (Fla. 2d D.C.A. 1988); and *R.A. Jones & Sons, Inc. v. Holman*, 470 So. 2d 60 (Fla. 3d D.C.A. 1985).

2. Summary Final Judgment, therefore, is entered in favor of Defendants, THEODORE R. BAUMGARDNER and THOMAS C. GARWOOD, JR., and against Plaintiff, DONALD I. REHMAN, and Defendants, THEODORE R. BAUMGARDNER and THOMAS C. GARWOOD, JR., shall go hence without day. Costs will be taxed upon appropriate Motion and hearing.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida this _____ of March, 1995.

Original Signed April 20, 1995
LINDA A. GLOECKNER,
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail Delivery to **JOHN E. DUBOSE, JR., ESQUIRE,** Post Office Drawer 3751, Orlando, Florida 32802 and to **DONALD I. REHMAN, PRO SE,** 1390 Windy Ridge Court, Longwood, Florida 32750 this _____ day of March, 1995.

_____

JUDICIAL ASSISTANT

APPENDIX L

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA

FIFTH DISTRICT — JANUARY TERM 1996

DONALD I. REHMAN

Appellant.

v.

GARWOOD McKENNA & McKENNA. P.A., etc., et al.,

Appellees.

_____/

NOT FINAL UNTIL THE TIME EXPIRES TO FILE REHEARING MOTION, AND, IF FILED, DISPOSED OF.

CASE NO. 95-1086

Decision Filed February 20, 1996

Appeal from the Circuit Court
for Orange County.
Linda A. Gloeckner, Judge.

Donald I. Rehman. Longwood.
pro se.

John E. Dubose, Jr., of Woolfolk, Estes, Keough & Dubose, P.A., Orlando, for Appellees.

PER CURIAM.

AFFIRMED.

PETERSON, C.J., DAUKSCH and COBB, J.J., concur.

IN THE DISTRICT COURT OF APPEAL OF THE
STATE OF FLORIDA FIFTH DISTRICT

DONALD I. REHMAN,
Appellant,

v.

CASE NO. 95-1086

GARWOOD, MCKENNA & MCKENNA, P.A., etc., et al.,
Appellee.

_____/

DATE: April 2, 1996

BY ORDER OF THE COURT:

ORDERED that Appellant's MOTION FOR REHEARING, and Appellant's MOTION FOR EN BANC REHEARING, filed March 1, 1996, are denied.

(SEAL)

I hereby certify that the foregoing is (a true copy of) the original court order.

/s/ Frank J. Habershaw
FRANK J. HABERSHAW, CLERK
BY: _____
Deputy Clerk
(COURT SEAL)

cc: Donald I. Rehman
John E. Dubose, Jr., Esq.

APPENDIX M

SUPREME COURT OF FLORIDA

THURSDAY, APRIL 18, 1996

DONALD I. REHMAN, Petitioner/Appellant, vs. GARWOOD, MCKENNA & MCKENNA, P.A., ETC., ET AL., Respondents/Appellees.	CASE NO. 87,744 District Court of Appeal, 5th District – No. 95-1086

The Supreme Court of Florida does not have common law certiorari jurisdiction. Art. § 3, Fla. Const. The "Petition for Common Law Certiorari will, therefore, be treated as a petition for discretionary review and/or appeal. *See* Fla. R. App. P. 9.040(c).

Because no jurisdictional basis has been alleged to support the petition for discretionary review of the appeal, this case is hereby dismissed.

The appeal is subject to reinstatement if jurisdiction is established on proper motion filed within fifteen days from the date of this order. *See* Art. V. § 3(b)(1), Fla. Const.

No motion for rehearing or for clarification may be filed in the Court addressed to the denial of the petition for discretionary review. *See* Fla. R. App. P. 3.330(d).

See Vetrick v. Hollander, 464 So.2d 552.

A True Copy
TEST:

Sid J. White
Clerk Supreme Court

H
cc: Hon. Frank J. Habershaw, Clerk
Hon. Fran Carlton, Clerk
Hon. Linda A. Gloeckner, Judge
Mr. Donald I. Rehman
Mr. John E. DuBoise, Jr.

By: /s/ [Illegible]
Deputy Clerk

[SEAL]

APPENDIX N

SID J. WHITE, CLERK

SUPREME COURT OF FLORIDA

500 SOUTH DUVALL STREET
TALLAHASSEE, FLA. 32399-1927
(904) 488-0125

DONALD I. REHMAN
1390 WINDY RIDGE COURT
LONGWOOD, FLORIDA 32750

4/22/96 filed 4 - 19 - 96

DONALD I. REHMAN
VS
GARWOOD, MCKENNA
& MCKENNA,
P.A., ETC., ET AL.

CASE NO. 87,744

I have this date received the below-listed pleadings or documents:

PETITIONER'S JURISDICTIONAL BRIEF HAS BEEN TREATED AS A MOTION FOR REINSTATEMENT.

PETITIONER'S BRIEF AND APPENDIX ORIG & 5

Please make reference to the case number in all correspondence and pleadings.

Most cordially,

/s/ Sid J. White
Clerk, Supreme Court

ALL PLEADINGS SIGNED BY AN ATTORNEY MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER.

SJW/BDM
cc: MR. JOHN E. DuBOSE, JR.